

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8550, 8552.1, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 713, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the Commercial Herring Fishery.

Informative Digest/Policy Statement Overview

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota and season dates and times that fishing operations are allowed for the 2008-09 season in San Francisco Bay and season dates and times for fishing operations for the 2008-09 season in Tomales Bay.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- The proposed regulations would establish the fishing quota for San Francisco Bay for the 2008-09 herring fishing season, based on the most recent biomass assessments of spawning populations of herring. The Department is providing the Commission the option to consider a quota within the range of 0 to 10 percent of the 2007-08 spawning biomass estimate of 11,183 tons. The Department is recommending the San Francisco Bay quota be set at 1,118 tons, which represents 10 percent of the 2007-08 spawning biomass estimate. If the Commission were to adopt this option, a 1,118 ton quota would result in a 1.9 ton individual quota for a "CH" gillnet permittee and a 1.1 ton individual quota for a non-"CH" gillnet permittee participating in the HEOK fishery.
- There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2008-09 herring season.
- Proposed regulations would allow fishing in San Francisco Bay from 5:00 p.m. on Monday, December 1, 2008, until noon on Friday, December 19, 2008 ("DH" gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Sunday, January 4, 2009, until noon on Friday, March 20, 2009.
- The proposed regulations would set the dates of the roe herring fishery in Tomales Bay from noon on Friday, December 26, 2008, until noon on Friday, February 27, 2009.

Following are minor changes proposed to clarify and simplify the regulations:

- The proposed regulations would correct the Limited Entry Pacific Herring permit application number revision date in subsection 163(b)(1) and Herring Eggs on Kelp permit application number revision date in subsection 164 (h)(1) to coincide with the 2008-09 season application.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the City of Carpinteria, City Council Chambers, 5775 Carpinteria Avenue, Carpinteria, California, on Friday, August 8, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Truckee Donner Public Utilities District, 11570 Donner Pass Road, Truckee, California on Friday, September 5, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 22, 2008, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on September 2, 2008. All comments must be received no later than September 5, 2008, at the hearing in Truckee, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **John Mello, Marine Region, phone (707) 441-5755, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The California commercial herring fishery takes place in four areas; San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. However, the greatest economic benefit is derived from herring activities in San Francisco Bay, which typically generates about 90 percent of the total average annual revenue for this California fishery. In real dollars, San Francisco Bay herring revenue has averaged about \$2.7 million out of \$3.0 million for the State, since 2004. All the herring fishermen and herring processing plants are small businesses as defined under Government Code Section 11342.610. Since the proposed quota of 10 percent spawning biomass will result in a 2.1 percent increase in allowable harvest compared to last season, there are no adverse economic impacts associated with the proposed regulation.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 1, 2008

John Carlson, Jr.
Executive Director